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May 10, 2019

VIA ECF

Honorable Peter G. Sheridan, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Bldg. & U.S. Courthouse
402 East State
Trenton, New Jersey 08608

**Re: *Kars 4 Kids Inc. v. America Can!*,
Civil Action No. 14-cv-7770 (PGS)(LHG)**

Dear Judge Sheridan:

This office, together with Orrick, Herrington & Sutcliffe LLP, represents Kars 4 Kids Inc. ("Kars 4 Kids") in this matter. As Your Honor may recall, there was a discussion in chambers about whether America Can! ("America Can") could read into evidence the deposition testimony of witnesses who were available to testify live. We understand this issue to still be open.

We write to suggest a possible solution: namely, if America Can will limit its cross examination of Kars 4 Kids' witnesses to the scope of direct (as is traditional), then Kars 4 Kids would consent to America Can using properly noticed deposition excerpts of those witnesses (subject to Kars 4 Kids' right to counter-designate and object to specific designations) in America Can's case-in-chief in lieu of live testimony from those witnesses.

This approach would solve the possible confusion that America Can felt might be created by an "all-inclusive cross" in which America Can both crossed Kars 4 Kids' witnesses and also went beyond the scope of direct to ask whatever questions it deemed necessary to prove its case-in-chief. Our offered solution, in which America Can's cross would be limited to

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the scope of direct but America Can could, during its case-in-chief, play deposition testimony in lieu of live testimony from witnesses who had appeared live during Kars 4 Kids' case-in-chief, would, perhaps, resolve America Can's concerns. Of course, as noted, this solution is premised on the understanding that America Can would not be able to call the witnesses live during its case-in-chief because they would have already testified once during Kars 4 Kids' case-in-chief.

We look forward to resolving this issue and we thank Your Honor for Your Honor's continued attention to this matter and we are available should Your Honor or Your Honor's staff have any questions.

Respectfully submitted,

s/Marc D. Haefner

Marc D. Haefner

cc: All Counsel of Record (via email)